

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.1.

Agenda Item Summary: The Department requests the Board initiate rulemaking to amend the air quality incorporation by reference rules to adopt the current editions of federal regulations, state statutes, and state rules. Proposed amendments to ARM Title 17, chapter 8, subchapter 13 would maintain consistency between federal regulations and state rules. Other proposed amendments to update grammar, punctuation, and addresses of the reference sources, and to delete the current incorporation by reference of 40 CFR 52.21 in ARM 17.8.767 are included in this rulemaking.

List of Affected Rules: This rulemaking would amend ARM 17.8.102, 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1305, 17.8.1310, 17.8.1402, and 17.8.1502.

Affected Parties Summary: The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments to the above-stated rules and take testimony on inclusion of the rule amendments into the State Implementation Plan (SIP).

Background: Annually, the Department requests that the Board update the rules that incorporate by reference state statutes, state administrative rules, and federal regulations. The incorporation by reference updating is accomplished by amending the dates in ARM 17.8.102. An attachment addresses the major changes in federal rules that will be adopted as a result of this action. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program. Other proposed amendments that make no substantive changes in the rules are included in this rulemaking. These include amendments to ARM Title 17, chapter 8, subchapter 13 to maintain consistency between federal regulations and state rules, and amendments to several rules that will update grammar, punctuation, and addresses of reference sources. A proposed amendment to ARM 17.8.767 would delete the incorporation by reference of 40 CFR 52.21, the federal prevention of significant deterioration of air quality (PSD) program. This incorporation by reference is unnecessary, because ARM Title 17, chapter 8, subchapter 8 contains the state's PSD program.

Hearing Information: The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. Section 75-2-205, MCA, states that no rule, rule amendment, or rule repeal under the Clean Air Act of Montana may take effect except after public hearing on due notice. EPA

regulations require a public hearing to take comment on adoption of revisions to the SIP.

Board Options: The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking, conduct a hearing, and appoint a hearing officer as described in the proposed MAR notice.

Description of Proposed Rule Revisions:

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES (1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2003~~ 2004, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference ~~refers~~ is to the ~~1994~~ 2000 edition of the USC ~~and Supplement I (2002)~~;

(c) remains the same.

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2003~~ 2004, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

Proposed amendments to ARM Title 17, chapter 8, subchapter 13 would maintain consistency between federal regulations and the state rules. A proposed amendment to ARM 17.8.767 would delete the incorporation by reference of 40 CFR 52.21. Other proposed amendments would update reference source addresses, citations, grammar, and punctuation in ARM 17.8.103, 17.8.202, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, 17.8.1202, 17.8.1302, 17.8.1305, 17.8.1310, 17.8.1402, and 17.8.1502. These amendments are described in the proposed MAR notice.

Enclosures:

1. Proposed Notice of Public Hearing on Proposed Amendment.

Board of Environmental Review
Attachment to Executive Summary

This attachment lists the major changes to the CFR sections that are incorporated by reference in the air program rules, and were published in the Federal Register between July 1, 2003 and June 30, 2004. These changes are included in the July 1, 2004, CFR edition that is being incorporated by reference in this rulemaking.

CFR Sections Affected: 40 CFR 60.110, 111, 116

General Explanation: Pursuant to a court settlement, EPA promulgated amendments to the **standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels)** for which construction, reconstruction, or modification commenced after July 23, 1984. The final rule amendments will exempt certain storage vessels by capacity and vapor pressure, exempt process tanks, and add the process tank definition.

CFR Sections Affected: 40 CFR 60.501, 503, 505; 40 CFR 63.14, 421-422, 425, and 427-428

General Explanation: EPA promulgated amendments to the **standards of performance for bulk gasoline terminals and the national emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations)** to provide for the use of alternative leak test procedures for railcars, a clarification on monitoring flares and thermal oxidation systems, alternative recordkeeping requirements for tank trucks and railcars, and the use of flare design specifications. The amendments provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two rules.

CFR Sections Affected: 40 CFR Part 60, Appendix D and Appendix F

General Explanation: EPA promulgated **amendments to standards of performance and monitoring requirements for new stationary sources**. The amendments set forth performance specification 11 (PS-11): specifications and test procedures for particulate matter continuous emission monitoring systems at stationary sources, and procedure 2: quality assurance (QA) requirements for particulate matter continuous emission monitoring systems at stationary sources. The PS-11 and procedure 2 will apply to sources that are required under an applicable regulation to use particulate matter continuous emission monitoring systems (PM CEMS) to monitor PM continuously. The PS-11 and procedure 2 will help to ensure that PM CEMS are installed and operated properly and produce good quality monitoring data on an ongoing basis.

CFR Sections Affected: 40 CFR 63.14 (Subpart A); 40 CFR 63.6580 through 6675 and Tables 1 through 8 (new subpart ZZZZ)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE)** with a site-rating of more than 500 brake horsepower (HP). EPA has identified stationary RICE as major sources of hazardous air pollutants (HAP) emissions such as formaldehyde, acrolein, methanol, and acetaldehyde. The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable

control technology (MACT) for RICE.

CFR Sections Affected: 40 CFR 63.863-865, 867 and Table 1 (Subpart MM)

General Explanation: On July 18, 2003, EPA had promulgated amendments to the **national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills**. Subsequent amendments promulgated by EPA in 2003 and 2004 were technical corrections to the original rule and the 2003 amendments.

CFR Sections Affected: 40 CFR 63.2330-2406 (new Subpart EEEE)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for new and existing organic liquids distribution (OLD) (non-gasoline) operations**, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. These NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all OLD operations at plant sites that are major sources to meet hazardous air pollutant (HAP) emissions standards reflecting the application of the maximum achievable control technology (MACT).

CFR Sections Affected: 40 CFR 63.6080-6175 (new Subpart YYYY)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines**. EPA has identified stationary combustion turbines as major sources of hazardous air pollutants (HAP) emissions such as formaldehyde, toluene, benzene, and acetaldehyde. The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for combustion turbines. In the final NESHAP, EPA has divided the stationary combustion turbine category into eight subcategories, including lean premix gas-fired turbines, lean premix oil-fired turbines, diffusion flame gas-fired turbines, diffusion flame oil-fired turbines, emergency turbines, turbines with a rated peak power output of less than 1.0 megawatt (MW), turbines burning landfill or digester gas, and turbines located on the North Slope of Alaska. EPA has also adopted a final emission standard requiring control of formaldehyde emissions for all new or reconstructed stationary combustion turbines in the four lean premix and diffusion flame subcategories.

CFR Sections Affected: 40 CFR 63.7080-7143 (new Subpart AAAAA)

General Explanation: EPA promulgated **national emission standards for hazardous air pollutants (NESHAP) for lime manufacturing plants**. The lime manufacturing emission units regulated will include lime kilns, lime coolers, and various types of processed stone handling (PSH) operations. The final NESHAP will require all major sources subject to the rule to meet HAP emission standards reflecting the application of maximum achievable control technology (MACT).